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JAN 16 2007

Appl. No. 10/754,178
Reply to Office Action of December 27, 2006

Attorney Docket No. 2003-0250 / 24061.144
Customer No. 42717

REMARKS

Claims 1-32 are present in the application. Of these, Claims 1-26 are allowed. The remarks below relate to Claims 27-32 and, in view of these remarks, Applicants respectfully request reconsideration.

Premature Finality

Applicants respectfully traverse the finality of the present Office Action (mailed December 27, 2006). More specifically, MPEP 706.07(a) specifies that an Office Action shall not be final "where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement". In the most recent prior Office Action (mailed April 12, 2006), the claim rejections in view of the prior art were all based on Vahedi U.S. Patent Application Publication No. 2003/0148224. In the present Office Action, the claim rejections are all based on newly-cited Huang U.S. Patent Application Publication No. 2004/0072443. Since Huang is a newly-cited reference, every rejected claim is subject to a new ground of rejection. During the time period between issuance of the April 12 Office Action and issuance of the December 27 Office Action, Applicants did not amend any of the claims, nor did Applicants file any information disclosure statement. Thus, the new art and new grounds of rejection were not necessitated by any amendment or by any information disclosure statement filed by Applicants. Instead, the new art and new grounds of rejection were necessitated by the fact that, in a pre-brief appeal conference, other examiners overruled the prior grounds of rejection based on Vahedi.

Consequently, as specified by MPEP 706.07(a), the present Office Action cannot be final, because this is a situation "where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement". It is therefore respectfully submitted that the finality of the present Office Action is not proper and must be withdrawn, and notice to that effect is respectfully requested.

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Independent Claim 27

Independent Claim 27 stands rejected under 35 U.S.C. §102 as anticipated by newly-cited Huang U.S. Patent Application Publication No. 2004/0072443. This ground of rejection is respectfully traversed. The PTO specifies in MPEP §2131 that, in order for a reference to anticipate a claim under §102, the reference must teach each and every element that is recited in the claim. Claim 27 recites:

forming a patterned photoresist layer including at least one
opening therein above the material layer; and
etching the material layer while protecting the photoresist
layer from etching by exposing the integrated circuit device to a
mixture including an etchant and a controller.

In the present situation, Huang forms a patterned photoresist 404 (Figure 4B) over an oxide layer 408. Then, a special extra protective layer 412 is formed over the photoresist 404. The purpose of the protective layer 412 is to protect the photoresist 404 during a subsequent etch process. Huang forms the protective layer 412 before the start of the etch process. During the subsequent etch process, the oxide layer 408 is etched through openings in the photoresist 404. Huang teaches that, during the etch process, the protective layer 412 protects the photoresist 404 from the etchant. Since Huang uses the special extra protective layer 412 to protect the photoresist 404 from etching, Huang does not use the different protection technique that is recited in Claim 27. In particular, Huang does not achieve "protecting the photoresist from etching" through use of the specific technique of "exposing the integrated circuit to a mixture including an etchant and a controller". Even assuming for the sake of discussion that Huang's etching process uses a mixture that contains both an etchant and a controller, they do not protect the photoresist 404 from the etching, because the protective layer 412 is already in place and providing protection for the photoresist 404. Since Huang very clearly is not "protecting the photoresist layer from etching by exposing the integrated circuit device to a mixture including an etchant and a controller", Huang does not disclose each and every element that is recited in Claim 27.

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Accordingly, Huang does not meet the requirements for anticipation set forth in MPEP §2131, and thus does not anticipate Claim 27 under §102. Claim 27 is therefore believed to be allowable, and notice to that effect is respectfully requested.

Dependent Claims

Claims 28-32 each depend directly or indirectly from Claim 27, and are also believed to be distinct from the art of record, for example for the same reasons discussed above with respect to Claim 27.

Conclusion

Based on the foregoing, it is respectfully submitted that all of the pending claims are fully allowable, and favorable reconsideration of this application is therefore respectfully requested. If the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647.

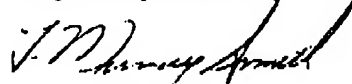
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Although Applicants believe that no fee is due in association with the filing of this paper, the Commissioner is hereby authorized to charge any fee required by this paper, or to credit any overpayment, to Deposit Account No. 08-1394 of Haynes and Boone LLP.

Respectfully submitted,



T. Murray Smith
Registration No. 30,222
(972) 739-8647

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HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: (972) 739-8647
Facsimile: (214) 200-0853
File: 24061.144

Enclosures: None

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